

STATE OF MICHIGAN
COURT OF APPEALS

TOM A. SAPIENZA,

Plaintiff-Appellant,

v

BLASTMASTERS POWER WASHING II,
ACCIDENT FUND COMPANY

Defendants-Appellees.

UNPUBLISHED
May 29, 1998

No. 201398
WCAC
LC No. 96-000607

Before: Hood, P.J., and Markman and Talbot JJ.

PER CURIAM.

Plaintiff Tom A. Sapienza appeals by leave granted an order entered by the Worker's Compensation Appellate Commission (WCAC) dismissing an appeal for failure to timely file the transcript. We affirm.

In a decision mailed on August 1, 1996, a magistrate denied plaintiff's claim for worker's compensation benefits. On August 28, 1996, plaintiff filed a timely claim for review with the WCAC. Pursuant to § 861a(5) of the Worker's Disability Compensation Act of 1969 (WDCA), MCL 418.101 *et seq.*; MSA 17.237(1) *et seq.*, the transcript of the hearing before the magistrate was due within sixty days of the filing of the claim for review (in this case, no later than October 27, 1996). Plaintiff's counsel ordered the transcript from the court reporting service on August 15, 1996. However, plaintiff's letter requesting the transcript did not state that a copy of the transcript was to be sent to the WCAC. Accordingly, while the parties each received copies of the transcript, no copy was sent to the WCAC. By a letter dated November 7, 1996, the WCAC informed plaintiff's counsel that the requirements for filing a transcript had not been met and that the appeal was subject to dismissal. On November 15, 1996, the WCAC dismissed plaintiff's appeal for failure to timely file the transcript. Plaintiff then filed a motion for reconsideration in which he asserted that he had substantially complied with the requirements of § 861a(5), and that his failure to file the transcript with the WCAC was due to the nonculpable negligence of counsel's secretary. In an affidavit, the secretary stated that, due to her haste in preparing the request for the transcript, she had inadvertently failed to direct the court reporting

service to file a copy with the WCAC. Plaintiff's motion for reconsideration was denied and this court granted leave to appeal.

On appeal, plaintiff argues that because he substantially complied with the requirements of § 861a(5), the WCAC erred in dismissing his appeal. We disagree. This Court reviews a decision by the WCAC to dismiss an appeal for an abuse of discretion. *Laudenslager v Pendell Printing, Inc.*, 215 Mich 167, 170-171; 544 NW2d 721 (1996). An abuse of discretion exists when a decision is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias. *Marrs v Board of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). An abuse of discretion may also be found if an unprejudiced person, considering the facts, would say there was no justification or excuse for the ruling. See, e.g., *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994).

Section 861a(5) of the WDCA provides:

A party filing a claim for review under section 859a shall file a copy of the transcript of the hearing within 60 days of filing the claim for review and shall file its brief with the commission and provide any opposing party with a copy of the transcript and its brief not more than 30 days after filing the transcript. For sufficient cause shown, the commission may grant further time in which to file a transcript.

The authority to dismiss an appeal for noncompliance with a statutory or rule requirement is implicit in the WCAC's authority to make rules of appellate procedure. See *Marshall v DJ Jacobetti Veterans Facility (On Remand)*, 205 Mich App 540, 543; 517 NW2d 855 (1994) (citing cases), rev'd on other grounds 447 Mich 544; 526NW2d 585 (1994).

This Court has stated that the doctrine of substantial compliance applies to procedural deadlines in worker's compensation cases. *Laudenslager, supra* at 171, citing *Dries v Chrysler Corp*, 402 Mich 78, 79; 259 NW2d 561 (1977); *Dean v Great Lakes Casting Co*, 78 Mich App 664, 668-669; 261 NW2d 34 (1977). "Substantial compliance" means compliance with the essential requirements of a contract or statute. See Black's Law Dictionary (6th ed), p 1428, citing *Wentworth v Medellin*, 529 SW2d 125, 128 (Tex Civ App 1975); see also *Gordon v Great Lakes Bowling Corp*, 18 Mich App 358, 361-362; 171 NW2d 225 (1969) (approving a jury instruction on substantial compliance to this effect in context of a contract action); cf. *Arnold Transit Co v Mackinac Island*, 99 Mich App 266, 275; 297 NW2d 904 (1980), citing *Stelzer v Huddleston*, 526 SW2d 710, 713 (Tex Civ App 1975) (explaining that rigid adherence to a procedural mandate will not be required if it is clear that a substantial compliance provides realistic fulfillment of the purpose for which the mandate was incorporated in the statute). Accordingly, the *Laudenslager* Court held that the WCAC abused its discretion when it dismissed the plaintiff's appeal on the basis of his failure to meet the briefing deadline by one day due to an "error of the mails." *Laudenslager, supra* at 169-173.

The plaintiff in *Laudenslager, supra* at 171-172, missed the briefing deadline due to circumstances that were essentially beyond his control. In contrast, the plaintiff in this case missed the

transcript deadline due to circumstances within his control: It was plaintiff who was ultimately responsible for monitoring the progress of his compliance with the statutory

requirements for bringing his appeal before the WCAC. Moreover, in *Laudenslager, supra* at 172, the WCAC decided to dismiss the plaintiff's appeal ten months after the plaintiff had filed his brief in an attempt to meet the deadline. In contrast, no copy of the transcript had been filed in this case when the WCAC dismissed plaintiff's appeal. For these reasons, we cannot say that the WCAC's decision to dismiss plaintiff's appeal due to his failure to meet the transcript deadline was an abuse of discretion. It was not so grossly violative of fact and logic that it evidenced perversity of will, defiance of judgment, and the exercise of passion or bias. *Marrs, supra* at 694. Nor could we say that it was without justification or excuse. *Cleary, supra* at 210.

Affirmed.

/s/ Harold Hood

/s/ Stephen J. Markman

/s/ Michael J. Talbot

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